

In re: Timothy D. Eyman, Bankruptcy Case No. 18-14536-MLB

EXHIBIT D

to Declaration of S. Todd Sipe
in Support of State's Objection
to Applications For Attorneys' Fees

SUPREME COURT
OF THE STATE OF WASHINGTON

TIM EYMAN AND
TIM EYMAN WATCHDOG
FOR TAXPAYERS LLC,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

No. 100040-5

APPELLANT'S MOTION TO
RECUSE COMMISSIONER

I. IDENTITY OF MOVING PARTY

Richard B. Sanders, attorney for Appellant Tim Eyman,
makes this motion.

II. STATEMENT OF RELIEF SOUGHT

Recuse the Commissioner of the court from further
proceedings in this matter. Further, your undersigned requests
oral hearing and a narrative opinion.

III. REFERENCE TO RECORD

- A. Motion for Stay pending Appeal
- B. Respondent State of Washington's Answer to Motion for
Stay pending Appeal
- C. Reply of Appellant Eyman on Motion for Stay Pending
Appeal

- D. Ruling Denying Motion for Stay Pending Appeal (9/14/21)
- E. Motion to Modify September 14, 2021 Ruling Denying Stay Pending Appeal
- F. Respondent State of Washington's Amended Response (11/12/21)
- G. Reply of Appellant Tim Eyman on Motion to Modify September 14, 2021 Ruling Denying Stay Pending Appeal (11/16/21)

IV. GROUNDS FOR RELIEF AND ARGUMENT

The commissioner's ruling of September 14, 2021 stated:

Mr. Eyman's fleeting argument for the first time on appeal that he is the equivalent of a charitable organization is not well taken. See RAP 2.5(a)(3) (an appellate court may consider an issue raised for the first time on appeal if it involves a manifest error affecting a constitutional right.)

Ruling Denying Motion for Stay Pending Appeal p. 5

This dismissive "fleeting argument" claim by the Commissioner is simply false, either intentionally so or in reckless disregard of the truth. In either case he should be recused from this proceeding.

This is not the responsibility or duty of your undersigned, rather the court.¹ The Commissioner is authorized by the Court

¹ Your undersigned has no personal ill will toward the Commissioner; however, does have a duty to at least *attempt* to protect his client's right to be heard by an impartial judiciary. Unfortunately, grounds for recusal may often only be documented after the fact.

to perform judicial functions and therefore is subject to the CJC. See CJC Application IA Parties to a proceeding are entitled to an impartial jurist, i.e. not only one with the absence of bias or prejudice for or against particular parties or classes of parties, but one who maintains an open mind. See CJC Terminology A judge has a duty of self-disqualification in any proceeding in which his impartiality might reasonably be questioned. CJC 2.11A This Court has a supervisory duty toward the Commissioner to ensure he acts with fidelity and diligence consistent with his obligations under the CJC. CJC 2.12 Moreover the Court has a responsibility to inform the appropriate authority when it has knowledge another judge, or lawyer, may have violated the CJC or RPC. CJC 2.15

Justice Whitener's excellent CLE presentation of November 19th on ethics and civility emphasized the lawyer's duty to act with honesty and civility and his responsibility to bring such problems to the attention of the relevant tribunal for appropriate action. Your undersigned heeds this timely advise.

In point of fact the charitable claim which the Attorney General misrepresented had not been brought to the attention of the trial court, and the Commissioner who ratified and repeated this misrepresentation, was fully briefed to the trial court in Appellant's Motion for Reconsideration. Notwithstanding, Attorney General Robert Ferguson misrepresented this fact to this Court in his August 23, 2021 Answer to Motion for Stay p. 16 broadly claiming it was not raised to the trial court. To this Appellant replied on August 30th p.6, n.4 the matter was not only raised but fully briefed in his trial court Motion for Reconsideration, and actually attached the relevant pleading to the original Motion for Stay as Exhibit C, p. 6-10. Thus the Commissioner was on notice the Attorney General had lied and was presented the record to prove it.

But the Commissioner ratified and published the lie as a ruling of the court. In so doing he either intentionally misrepresented the record or, charitably, accepted the Attorney General's lie without verifying the record even though it was specifically brought to his attention. This sort of dishonesty or

bias cannot be ignored by Mr. Eyman's representative because dishonesty (by the AG and perhaps the commissioner) strikes at the foundation of what should be a fair proceeding before impartial jurists. This is intolerable and requires action by the court to ensure Mr. Eyman's rights are not compromised by dishonesty of the adverse party or bias of the decision maker.

But there is more. Appellant's Motion to Modify the Commissioner's Ruling not only specifically called out the aforementioned misrepresentation of the record but cited multiple precedents that issues raised in motions for reconsideration are preserved for appeal (although neither the Attorney General nor the Commissioner claimed otherwise.) *See* Motion to Modify September 14, 2021 Ruling Denying Stay p. 18 n.17.

However, in response to Appellant's Motion to Modify, Attorney General Robert Ferguson doubled down on his dishonesty by again stating "Eyman did not raise the issue below." P. 28 Eyman's Reply of November 16, 2021 once again

addressed the issue p. 5-7. And once again attached his Motion for Reconsideration to the trial court to prove the point.

It may be true that most members of the judiciary do not share Mr. Eyman's creed when it comes to limited government and taxation. However, the judicial canons as well as the Washington Law Against Discrimination² render this factor as irrelevant as race or sexual orientation. CJC 2.2 Mr. Eyman is not to be disadvantaged in this Court, or any court, because he believes in limited government and reasonable taxation.

So why emphasize this point? Because this whole proceeding is carried on as a personal vendetta against Mr. Eyman and his family by his political enemy, Robert Ferguson. This Court will be asked to review multiple instances of the Attorney General's dishonesty before the trial court and on appeal, as well as the trial court's acquiesce and affirmation of this as well. Every judicial figure having anything to do with this

² RCW 49.60.030(1) established the right to be free from discrimination based on "creed." This term is repeated in .010 (purpose) whereas .020 requires the chapter be "construed liberally for the accomplishment of the purposes thereof." By dictionary definition "creed" is broadly construed as "any system of belief or opinion." *The Random House Dictionary of the English Language, College Ed.* 314

case must give Mr. Eyman the full measure of justice he deserves without reluctance or favor. This may mean the Attorney General's misconduct will be laid open to public knowledge, as well as the conduct of certain judicial figures. That General Ferguson is the most powerful lawyer in this State and a powerful political figure should be no disincentive to protect the rights of political dissident Eyman when they conflict with General Ferguson. If a member of the judiciary feels he or she cannot fulfill that role, the honorable and required course is recusal.

To properly appreciate why honesty and courage is necessary in the proceeding, in particular, the context must be understood. This unprecedented action was launched against Mr. Eyman to destroy a political enemy. How else does one explain the constant barrage of press releases from the Attorney General disparaging his opponent? Did any justice of this honorable court before joining the judiciary employee a press agent to disparage opposition litigants? Are judges immune from the Attorney General's false disparagement of Mr. Eyman in the

media? This is a question which cannot to be ignored by your undersigned.

Even the Findings of the trial court (drafted by the Attorney General) were entered without notice contrary to CR 52(c), edited for a press release, and then published as a fundraising letter for a future unspecified campaign of the Attorney General. *See* Motion for Reconsideration to trial court p. 1-6 and see Fundraising Findings, attached. *Compare*, Criminal Justice Standards for Prosecution Function, Fourth ed. (2017): Standard 3-1.6 Improper Bias Prohibited (personal considerations not be considered); Standard 3-1.7 Conflicts of Interest (not allow interests in personal advancement or aggrandizement to affect judgment); Standard 3-1.10 Relationship with the Media (not allow judgment to be influenced by potential media contacts or attention); Standard 3-4.4 (prosecutor should not consider partisan or other improper political personal considerations)

As detailed in the Motion for Reconsideration to the trial court, Mr. Ferguson suborned a false declaration from employee Tony Perkins to claim the State was “irreparably prejudiced”

because Mr. Eyman was withholding information about his donors when, in fact, the State had the cancelled checks from every donor detailing the name, date, amount, address, phone number, etc. *See* Motion for Reconsideration to the trial court p. 3-6 Moreover Mr. Eyman supplied the State with a full release of all information from his bank accounts in the context of the same motion which the State used a few days later to subpoena even more current records—all without notice to your undersigned, Mr. Eyman’s attorney of record. *Compare* CR 45(b) Then the Attorney General threatened private small donors who intervened to protect their First Amendment rights with hundreds of thousands of dollars in attorney fees if they did not withdraw—which, frightened—they did.

Thus Mr. Eyman was denied a fair trial on the merits and suffocated with millions in fines upon the blatant and intentional misrepresentation that he withheld donor information. If the court agrees there was dishonesty, justice for Mr. Eyman must be served even if individual justices and other court personnel do

not share his creed and would prefer to shield General Ferguson from the just consequences of his actions.

Even the scope of the injunctive relief sought and obtained by the Attorney General is unprecedented, designed to knock out a political adversary. No other person is so burdened by this discriminatory treatment. Such a remedy is not supported by the FCPA and is contrary to the Act. As detailed herein, the claim of the State and the Commissioner that Mr. Eyman did not raise the First Amendment charity claim below is **blatantly false**. The Commissioner must be recused from hearing further matters in this proceeding.

I certify that this Motion contains 1,651 words, in compliance with RAP 18.17(b).

Respectfully submitted this 10th day of December 2021.

GOODSTEIN LAW GROUP PLLC

By: s/Richard B. Sanders
Richard B. Sanders, WSBA # 2813
Carolyn A. Lake, WSBA # 13980
Counsel for Appellants

ROIL LAW FIRM, PLLC

By: s/Seth S. Goodstein
Seth S. Goodstein, WSBA #45091
Counsel for Appellants

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

<p>S. Todd Sipe Paul M Crisalli Eric Newman Attorney General of Washington PO Box 40100 Olympia, WA 98501-0111 Email: Todd.Sipe@atg.wa.gov paul.crisalli@atg.wa.gov eric.newman@atg.wa.gov</p> <p>Jessica Madeley, Paralegal Email: Jessica.Madeley@atg.wa.gov</p> <p>Jessica Buswell, Legal Assistant Email: Jessica.Buswell@atg.wa.gov</p> <p>Electronic Mailing Inbox Email: ComCEC@atg.wa.gov</p>	<p><input type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email</p>
<p>Mark Lamb The North Creek Law Firm 12900 NE 180th Street, Ste. 235 Bothell, WA 98011 Email: mark@northcreeklaw.com</p>	<p><input type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email</p>
<p>Joel B. Ard Ard Law Group PLLC PO Box 11633 Bainbridge Island, WA 98110 Email: joel@ard.law</p>	<p><input type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email</p>

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 10th day of December 2021 at Tacoma, Washington.

s/Deena Pinckney
Deena Pinckney

Hearing Date: Friday, May 14, 2021
Hearing Time: 9:00 a.m.
Judge: Hon. Dixon

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

STATE OF WASHINGTON,

Plaintiff,

v.

TIM EYMAN et al.,

Defendants.

Case No. 17-2-01546-34

FUNDRAISING FINDINGS

The attached fundraising appeal from Attorney General Robert Ferguson demonstrates the purpose of this Court's disputed and objectionable Findings: to demean Mr. Eyman from behind the screen of judicial immunity and raise money for candidate Ferguson. The claim that hundreds of thousands of dollars in "campaign" contributions went to Mr. Eyman personally is false, and intentionally so. These funds were donated to Mr. Eyman to pay his personal expenses and were used exactly for that. What campaign? These "Findings" are Ferguson fundraiser sound bites and if the Court didn't realize their purpose before, it certainly knows it now. The motion to reconsider should be granted and these illegitimate findings vacated as required by CR 52.

Respectfully submitted this 6th day of May, 2021.

GOODSTEIN LAW GROUP PLLC

By: s/Richard B. Sanders
Richard B. Sanders, WSBA #2813

FUNDRAISING FINDINGS-1

210506.Eyman Fundraising Finding

**GOODSTEIN
LAW GROUP** PLLC

501 South G Street
Tacoma, WA 98405

Ph: (253) 779-1411
Tel: (253) 779-4000

Seth S. Goodstein, WSBA # 45091
Carolyn A. Lake, WSBA #13980
Attorneys for Defendants Tim Eyman and Tim Eyman,
Watchdog for Taxpayers, LLC

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FUNDRAISING FINDINGS-2

210506.Eyman Fundraising Finding

**GOODSTEIN
LAW GROUP** PLLC

501 South G Street
Tacoma, WA 98405

Fax: (253) 779-4111
Tel: (253) 779-4000

DECLARATION OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

<p>S. Todd Sipe Paul M Crisalli Eric Newman Attorney General of Washington PO Box 40100 Olympia, WA 98501-0111 Email: Todd.Sipe@atg.wa.gov paul.crisalli@atg.wa.gov eric.newman@atg.wa.gov</p> <p>Jennifer Singleton, Paralegal Email: Jennifer.Singleton@atg.wa.gov</p> <p>Jessica Madeley, Paralegal Email: Jessica.Madeley@atg.wa.gov</p> <p>Jessica Buswell, Legal Assistant Email: Jessica.Buswell@atg.wa.gov</p> <p>Electronic Mailing Inbox Email: ComCEC@atg.wa.gov</p>	<p><input type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email</p>
<p>Mark Lamb The North Creek Law Firm 12900 NE 180th Street, Ste. 235 Bothell, WA 98011 Email: mark@northcreeklaw.com</p>	<p><input type="checkbox"/> U.S. First Class Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email</p>

1 Joel B. Ard
2 Ard Law Group PLLC
3 PO Box 11633
4 Bainbridge Island, WA 98110
5 Email: joel@ard.law

- ☐ U.S. First Class Mail
☐ Via Legal Messenger
☐ Overnight Courier
☒ Electronically via email

6 I certify under penalty of perjury under the laws of the State of Washington that the
7 foregoing is true and correct.

8 DATED this 6th day of May 2021 at Tacoma, WA.

9 s/Deena Pinckney
10 Deena Pinckney, Legal Assistant
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Deena Pinckney

Subject: FW: Bob won't be intimidated

From: Katherine @ Team Ferguson <info@electbobferguson.com>

Sent: Thursday, April 29, 2021 2:31 PM

To:

Subject: Bob won't be intimidated

Thanks for your interest in Attorney General Bob Ferguson's work holding powerful special interests accountable to the rule of law. If you want to receive only our most important emails, [click here](#), or to unsubscribe from all messages [click here](#).

Bob just came out of a fundraising freeze and he needs your grassroots support to show the strength of our movement.

[Click here to give \\$20 or more before tomorrow's deadline!](#)

CONTRIBUTE

Have you heard the phrase 'no good deed goes unpunished'?

Bob and his legal team recently delivered Tim Eyman his day of reckoning. The state caught Eyman concealing hundreds of thousands of dollars in campaign contributions that ended up in his personal bank account — again.

A respected Thurston County Superior Court judge had the following to say:

- Eyman's illegal conduct was "part of a pattern of violations, which resulted from a knowing and intentional effort to conceal, deceive, mislead and engage in collusive behavior."
- "In the history of the Fair Campaign Practices Act enforcement, it would be difficult for the court to conceive of a case with misconduct that is more egregious

or more extensive than the misconduct committed by defendant Eyman in this matter.”

Pretty appalling, right? Well, Bob and his legal team scored a major victory for justice and transparency. **The court ordered Eyman to pay \$5.5 million that he cannot discharge in bankruptcy.** He’ll be paying for decades to reimburse taxpayers. Additionally, the court issued an injunction that **blocks Eyman from directing the finances of any initiative campaign.**

Eyman’s supporters responded by attacking Bob personally.

Conservative talk radio host Dori Monson, recently suspended by KIRO for his bigoted commentary, brought Tim Eyman on his show within minutes of Bob’s sweeping court victory. Monson screamed into the microphone that Bob was “the most dangerous politician he’s ever covered” for taking on Eyman. Monson puts conservative interests above the rule of law — and doesn’t seem to care about the potential implications of his vitriolic rhetoric.

[Bob needs to know we have his back. Can we count on you to give \\$20 today?](#)

*If you've saved your payment information with ActBlue Express, your donation will process immediately by clicking a button below.
Otherwise, you will be redirected to a donation page.*

Give \$20 immediately »

Give \$50 immediately »

Give \$100 immediately »

Give another amount »

Bob doesn’t accept contributions from large corporations — instead, he relies on grassroots supporters like you to keep him fighting for Washingtonians. He’s the People’s Attorney. He can’t be intimidated by ranting conservative talk radio hosts. **But we need to have his back.**

Bob just came out of a fundraising freeze, and he has a lot of ground to make up. We need your help to show the strength of our movement:

<https://go.bobferguson.com/a/april-2021>

Thank you,
Katherine



CONTRIBUTE

Paid For By Friends of Bob Ferguson (D)
Re-election to Attorney General
PO Box 22169
Seattle, WA 98122
United States

Email is an important way for Bob Ferguson to keep supporters like you informed about critical issues and to build a winning grassroots campaign. If you no longer want to hear from Bob Ferguson [click here to get off all our lists instantly](#). Questions or concerns? [Contact us here](#).

The campaign to re-elect Bob Ferguson does not accept corporate contributions or contributions from entities or individuals under investigation by the office of the Attorney General of Washington. The Bob Ferguson re-election campaign will accept contributions from individuals, small businesses, and associations.
Copyright Friends of Bob Ferguson (D), All rights reserved.

GOODSTEIN LAW GROUP PLLC

December 10, 2021 - 4:43 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,040-5
Appellate Court Case Title: State of Washington v. Tim Eyman et al.
Superior Court Case Number: 17-2-01546-3

The following documents have been uploaded:

- 1000405_Motion_20211210164217SC612122_6748.pdf
This File Contains:
Motion 1 - Other
The Original File Name was 211210.Eyman. Motion to Recuse Commissioner.with Attachment.pdf

A copy of the uploaded files will be sent to:

- Jessica.Buswell@atg.wa.gov
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Comments:

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Filing on Behalf of: Richard B Sanders - Email: rsanders@goodsteinlaw.com (Alternate Email: dpinckney@goodsteinlaw.com)

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